

HR 13871

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } No. 93-1025

## FEDERAL EMPLOYEES COMPENSATION AMENDMENTS

MAY 2, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,  
submitted the following

### REPORT

together with

### DISSENTING VIEWS

[To accompany H.R. 13871]

The Committee on Education and Labor, to whom was referred the bill (H.R. 13871) to amend chapter 81 of subpart G of title 5, United States Code, relating to compensation for work injuries, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### INTRODUCTION AND PURPOSE OF LEGISLATION

Since the 1966 Amendments to the Federal Employees Compensation Act, a number of social and economic developments have made it necessary to further review the adequacy of compensation benefits for injured Federal workers, and the efficacy of the delivery system for the payment of those benefits. The conclusions drawn from that review, combined with the recommendations of the National Commission on State Workmen's Compensation Laws, led the Committee to recognize that new amendments were required to modernize and upgrade the present system of compensating injured Federal workers. H.R. 13871 represents an effort to conform chapter 81 of subpart G of title 5, United States Code (hereafter in this report referred to as the "Act") to the latest thinking in the area of workmen's compensation programs.

It is the purpose of this legislation to begin a program updating the Act so that it might clearly reflect the most equitable methods for the compensation of Federal employees injured while in the performance of their duties. The bill would, among other things, extend the time for

filing for disability compensation from one to three years, thus revising an often unfair statute of limitations; it would provide for equal treatment of surviving widows and widowers, eliminating the artificial differences in entitlement between husband and wife; it would grant Federal employees who recover from disabling injuries within one year a guaranteed right to return to their former jobs or jobs of equal rank and pay. To eliminate the delay between notice of injury and payment of compensation benefits, this bill would authorize the employing agency to continue employee's pay, in cases where the claim for wage loss has been made on the basis of a traumatic injury, for a period not to exceed 45 days. The bill would allow disabled Federal employees to retain their government sponsored insurance, and permit their time on the disability rolls to be credited as active service time for civil service retirement benefits; it would permit continuation of maximum benefits to those workers who recover sufficiently to enter an approved program of vocational rehabilitation.

Progressive new developments like these are necessary to maintain the Act as a model workman's compensation program.

#### COMMITTEE ACTION

In recognition of newly developed concepts of workmen's compensation law, and since the last revision of the Federal Employees Compensation Act occurred back in 1966, the Select Subcommittee on Labor under the Chairmanship of Congressman Dominick V. Daniels, conducted 4 days of hearings on H.R. 9118, a bill introduced by Mr. Daniels to amend the F.E.C.A. Testimony was heard from all significant segments of affected employee groups, the Administration, experts in the field of workmen's compensation law, and members of Congress. As a result of the information gathered at the hearings, and after further negotiations with minority members of the Subcommittee and representatives of the Administration on March 14, 1974, the Select Subcommittee on Labor reported unanimously H.R. 9118 with amendments to the Full Committee on Education and Labor. On April 3, 1974, the House Education and Labor Committee, after accepting H.R. 13871 introduced by Mr. Daniels and cosponsored by 22 members of the Committee as a substitute for H.R. 9118, reported favorably H.R. 13871 unanimously.

#### EXPLANATION AND JUSTIFICATION OF MAJOR PROVISIONS OF THE BILL

##### *Continuation of Pay*

Section 11 of the bill amends Section 8118 to the Act to authorize the employing agency to continue payment of an employee's pay where the employee files a claim under the Act related to a "traumatic" injury. This section also provides that the pay shall continue unless controverted under regulations of the Secretary of Labor, and under accounting procedures and regulations of the Secretary, "for a period not to exceed 45 days." Under current law once an initial determination has been made on a claim compensation is paid from the date wage loss begins (subject to any statutory waiting period). However, in

the course of the related hearings on H.R. 9118 it was suggested that certain economic hardships and effects might arise where an employee is without any income for the period associated with the administrative handling and processing of his claim for workmen's compensation benefits. Normally such effects are not, nor are they here recognized as, compensable within the framework of concepts surrounding Workmen's Compensation. They are not directly related to or caused by the injury, and are not susceptible of measurement adequate for the purpose of formulating a "compensation" remedy or award suited to universal application because they only relate to effects that might occur in the individual case. For these reasons, as distinguished from the initial proposal (H.R. 9118 as introduced June 29, 1973), the Committee bill (H.R. 13871) does not simply "permit" such payments, nor state that they be "considered as compensation". Instead it would authorize continuation of pay when a claim is filed; and provides that "compensation for disability" commences *after* the period for which the employee has been temporarily continued in pay status, including any period of disability for which the employee elected to use annual or sick leave.

Since it is the understanding of the Committee that the continuation of a full pay will be treated as such for all purposes, including tax withholding, contribution, retirement, etc., it is anticipated that the result for the employee would be limited to the intent of the Committee that interruption in pay be eliminated, while at the same time providing for net payment to an employee of an amount approximately equivalent to the amount he would have received as compensation. The intent is not to increase the amount of compensation for the period immediately following the filing of a claim related to work connected traumatic injury, but to eliminate interruptions in the cash flow for the employee.

Accordingly the Committee expects that the Secretary will in the form of accounting procedures and regulations authorized in the bill, provide for the result intended. It was also the understanding of the Committee that, consistent with the above, where it is determined that an injury is not compensable, such regulations will provide for an adjustment in the annual or sick leave account of the employee.

#### *Civil Service Retention Rights*

Section 22 of the bill would assure Federal employees injured on the job and receiving disability compensation that during their period of disability, they will incur no loss of benefits which they would have received absent the injury or disease. This section is not intended to accord these disabled workers greater rights than they would normally receive if still working, but rather it is designed to insure that the disability not reduce those work related benefits rightly due the employee.

In addition, this amendment provides a guaranteed right to an injured employee to return to his former or an equivalent position if he recovers within one year from the date compensation begins. For those employees whose disability extends beyond one year, the employing agency or department is to grant priority in employment to the injured worker. The Committee expects the Civil Service Commission

to promulgate rules and regulations for the implementation of this provision.

*Addition to Scheduled Awards*

Compensation for the loss of an arm, leg, foot, hand, eye, and so forth are specified in the present statute by the part of the anatomy and the number of weeks of allowable compensation. Loss of or loss of use of an internal or unspecified external organ cannot now be compensated in this manner. If an employee suffers this type of loss due to a work related injury or disease, justice and logic require that he receive schedule benefits. Section 5 of this bill adds a new subsection to the provision for schedule awards and authorizes payment of up to 312 weeks for said loss or loss of use.

Because of this addition to the scheduled awards, a new definition of "organ" was included in section 8101 of the statute. It specifically excludes from the definition "heart, brain, and back." The Committee believes that this exclusion is necessitated because of the still uncertain state of the medical art in determining the extent of loss to those particular organs. However, because the Committee wishes to make coverage as broad as possible, it will require the Secretary of Labor to undertake a study concerning how these excluded organs could be properly added to the schedule provisions of the Act.

*Free Choice of Government Facilities or Private Physicians—Expanded Medical Services*

Under existing law an injured worker is required to make use of available U.S. facilities such as the Public Health Service and Veterans Administration hospitals for medical services and could use private physicians designated by the Secretary only if the use of U.S. facilities is impracticable.

The National Commission on State Workmen's Compensation Laws recommended that injured employees be permitted a choice of physician from a designated panel. Section 2 of the bill would bring the Act into line with this recommendation, as well as permitting the continued use of the available Federal facilities, if the worker so chooses.

In addition to allowing the worker a choice of facilities and physicians, the bill includes podiatrists in the list of authorized physicians and available services. This reflects the recognition of the authors of the bill that injured workers are choosing more diverse methods of medical treatment to cure their ills, and that Federal employees compensation should allow for such choice.

*Vocational Rehabilitation—Full Compensation*

Present law requires a reduction in compensation when a Federal employee's disability changes from total to partial. While this practice is considered reasonable in the general field of compensation, it works a hardship on those workers who are enrolled or who would like to enroll in a rehabilitation program at the time of change in disability from total to partial.

The amendment made by Section 3 of the bill would permit the Secretary of Labor to continue the compensation rate without reduction as an inducement for partially disabled workers to enter into approved programs of rehabilitation so that they may return to work

and leave the compensation rolls. It is intended to eliminate the disincentive to return to vocational rehabilitation caused by the present reduction in benefits.

*Equality of Entitlement for Husband and Wife*

Our pattern of social thinking has changed dramatically in the United States in recent years. No longer can a husband be considered as the sole breadwinner of the family. In many instances a family's standard of living and the education and well being of children are based on the combined income of husband and wife.

Section 1(c) of the bill erases the artificial differences between the entitlement of husband and wife. It permits a widower to receive the same benefits as a widow because of the death of his federally employed spouse if he lived with her or was dependent upon her at the time of her death or if living apart for good reason or because of the desertion of the husband by the wife.

In addition, Section 6 of the bill permits an injured female worker to receive the 8 $\frac{1}{3}$  percent augmented compensation for dependents if she has a husband who is a member of the same household; or receives regular contributions from her for his support or if she has been ordered by a court to contribute to his support.

*Statute of Limitations*

A number of meritorious claims are not paid because of the existing 1 year requirement for the filing of claims. The amendment contained in Section 14 of the bill would extend the period for filing from 1 to 3 years and eliminate the often inequitable 5-year waiver provision. It is intended that the present provision in the law concerning latent disabilities, and the newly added section tolling the statute of limitations in cases of exceptional circumstances will provide the worker the same protection afforded by the existing waiver provision without the attendant difficulties.

*Widows' Benefits—Redistribution*

The Committee because of its recognition that parents retain a continuing responsibility for the welfare of their children, determined that some reallocation of survivors benefits be made. Therefore, Section 16 of the bill while retaining the 75 percent of employee's earnings ceiling, reallocates benefits between widows and widowers and children by increasing their share generally by 5 percent.

*Cost of Living Increases*

Despite efforts to clearly reflect the most recent cost of living increases through the CPI, the Committee ascertained that the present method for adjusting compensation to increases in the Consumer Price Index was faulty. The problem was created by the time lag between computation of the increase and payment of the increase. The amendment contained in Section 21 of the bill is a reasonable and logical method for accurate payment of cost of living increases to compensation recipients. It achieves this result by removing the two month waiting period currently required following a 3 percent rise in the price index for three consecutive months over the price index for the latest base month.

Section 24 of the bill corrects the unintentional exclusion of certain groups of beneficiaries, including those from the Federal Public Works Administration, the Civilian Conservation Corps, the Works Projects Administration, and other New Deal Agencies from receiving the automatic cost of living increases provided for by the 1966 Federal Employees Compensation Act Amendments.

*Receipt of Other Benefits*

Section 9 of the bill permits employees or survivors to receive benefits administered by the Veterans Administration while receiving benefits under the Act as long as such payment is not for the same injury or same death. It would also allow receipt of military retirement or retainer pay while receiving payments under the Act subject to the limitations on receipt of dual compensation by retired officers contained in 5 U.S.C. § 5532.

The reason for this amendment is the justifiable fact that if a Federal worker incurs a job related injury which is compensable it is unfair to deprive him of these benefits solely because he is entitled to payments from other sources for different injuries or service. His ability to receive compensation payments should be based upon the merits of his present claim.

*Federal Employees Compensation Study*

Because of more recent ongoing studies of the workman's compensation programs at both the State and Federal level, the Committee believes it is not only justified, but absolutely essential, to conduct a broad-based review of the Federal Employees Compensation Program to ascertain whether further changes are required. Among the more specific areas of concern will be the question of granting more discretion to the Secretary of Labor to increase maximum monthly attendant and maintenance allowance, and an examination of the extent and distribution of survivor benefits.

*Effective Dates*

It is the Committee's intention that all sections of these amendments be effective from the date of enactment and be applicable to any injury or death occurring after such date unless otherwise stated. In addition sections 1 (a) and (b), 2, 3, 7 (a) and (b), 8 (a) and (b), 9, 16 (a) and (b), 17, 19, 20, 21, 22, 24, and 25, are to be applicable to all cases where the injury or death occurred prior to the date of enactment but the provisions of these sections are to be applicable only to any period beginning on or after the date of enactment.

ESTIMATE OF COST

In accordance with clause 7 of Rule 13, the Committee estimates that costs which would be incurred in carrying out H.R. 13871 as follows: \$1,000,000 for the fiscal year ending June 30, 1974; \$6,777,629 for the fiscal year ending June 30, 1975; \$8,266,939 for the fiscal year ending June 30, 1976; \$10,283,961 for the fiscal year ending June 30, 1977; \$12,785,069 for the fiscal year ending June 30, 1978; and \$15,886,433 for the fiscal year ending June 30, 1979.

The Committee's estimate of cost (except for the cost for fiscal year 1974) is the same as that supplied by the Administration. The Administration supplied no cost estimate for fiscal year 1974.

SECTION-BY-SECTION DESCRIPTION OF THE BILL  
AS REPORTED

*Section 1*

Subsections (a) and (b) of this section provide for the inclusion of podiatrists in the definition of "physician" in section 8101(2) of chapter 81 of subpart G of title 5, United States Code (hereafter in this analysis referred to as the "Act") and the definition of "medical, surgical, and hospital services and supplies" in section 8101(3) of the Act.

The amendment made by subsection (c) of this section erases the artificial differences between the entitlement of husband and wife. It allows a widower to receive benefits because of the death of his federally employed spouse if he lived with her or was dependent upon her at the time of her death or if living apart for good reason or because of the desertion of the husband by the wife.

Subsection (d) of this section adds a new definition to section 8101 of the Act which defines and clarifies the term "organ" and excludes from that term for purposes of scheduled awards under the Act the brain, heart, and back.

The amendment made by subsection (d) also adds a definition of "United States medical officer and hospital" to such section 8101. The term is defined to include all officers and hospitals of the Army, Navy, Air Force, Veterans' Administration, and Public Health Service, and any other officer or hospital designated by the Secretary.

*Section 2*

This section amends 8103(a)(3) of the Act to accord any employee free choice of a physician approved by the Secretary. The present law mandates use of U.S. medical facilities if available, and allows use of private physicians only if said facilities cannot be used.

*Section 3*

The amendment made by this section would eliminate the requirement of section 8106 of the Act that compensation be reduced in instances where the disability changes from total to partial while the employee is enrolled in a vocational rehabilitation program approved by the Secretary.

The present law requires a reduction in the compensation received by an injured employee when his disability changes from total to partial.

*Section 4*

This section makes a technical amendment which corrects a grammatical error made between the 1966 amendments to the Federal Employees Compensation Act (P.L. 89-488 of July 4, 1966) and the codification of these amendments (P.L. 90-83 of September 11, 1967).

*Section 5*

The amendment made by this section adds to the list of scheduled awards in section 8107(c) of the Act any important internal or external organs as specified by the Secretary. Organ is defined for purposes of this Act by the proposed amendment contained in section 1(d) of the bill.

In addition, the amendment made by this section specifies that such losses are to be compensated for a period not to exceed 312 weeks.

*Section 6*

The amendment made by this section, when read with the conforming amendment in section 1 of the bill, eliminates the discriminatory effect of the present law and permits an injured female worker to receive the 8 $\frac{1}{3}$ % augmented compensation for dependents if she has a husband who is a member of the same household, receiving regular contributions for his support or if she has been ordered by a court to contribute to his support.

*Section 7*

The amendment made by subsection (a) of this section increases the maximum monthly allowance contained in section 8111(a) of the Act when the service of an attendant is necessary from \$300 to \$500.

*Section 8*

The amendment made by this section removes the requirement of present law that the Office of Workmen's Compensation programs review an individual's compensation and possibly reduce it when he reaches the age of 70.

*Section 9*

The amendment made by this section would permit employees or survivors to receive benefits administered by the Veterans' Administration while receiving benefits under the Act as long as such payment is not for the same injury or the same death. It would also allow receipt of military retirement or retainer pay while receiving benefits under the Act subject to the limitations on receipt of dual compensation by retired officers contained in 5 U.S.C. § 5532.

*Section 10*

The amendment made by this section would change the time for accrual of right to compensation by changing the 21-day waiting period for retroactive benefits to 14 days. This change conforms to the recommendation of the National Commission on Workmen's Compensation Laws.

*Section 11*

The amendment made by this section authorizes Federal agencies to continue an employee's pay, in cases where claim for wage loss has been made on the basis of a traumatic injury, for a period not exceeding 45 days subject to certain applicable sections of that Act and the Secretary's regulatory authority. Provision is made for applying the waiting days provided in section 8117 of the Act at the end of the period of continuation of pay, if disability continues beyond that date. The continuation of pay is not to be affected by the compensation rates in sections 8105 and 8110 of the Act and for all intents and purposes is to be considered a continuation of the monthly pay in 8101(4) of the Act.



*Section 12*

This section amends section 8119 of the Act by lengthening the time limit during which notice of injury or death can be given from 48 hours to 30 days and adds a requirement for notice of death. In addition, the section removes both the penalty provision as well as the provision for waiver for failure to give timely notice of injury or death.

*Section 13*

The amendment made by this section would permit Federal agencies to obtain claim forms from the Government Printing Office if such forms are approved by the Secretary. The present law requires the agencies to obtain the forms directly from the Department of Labor. This amendment would have the effect of allocating the costs of printing between the agencies using the notice.

*Section 14*

The amendment made by this section eliminates the 5-year waiver for the filing of claims, changes the statute of limitations for filing from 1 to 3 years, clarifies the present requirements for actual knowledge, adds a provision delaying the running of the time for filing if the Secretary excuses the failure to comply because of exceptional circumstances, and includes a provision making the filing of a disability claim satisfy the time requirements of a death claim based on the same injury.

*Section 15*

The amendment made by this section would expedite recovery by the Federal Government of amounts paid a claimant where there is a subsequent third party recovery by granting the government a lien on such recovery in an amount not to exceed the amounts already paid to the individual in compensation less reasonable costs and attorney's fees. This amendment also sets forth a minimum recovery by the claimant.

*Section 16*

The amendment made by this section would raise benefits paid to widows by 5% without increasing the present ceiling of 75% of the employee's earnings.

*Section 17*

The amendment made by this section would allow death benefits to exceed the former employee's monthly pay if such excess is created by cost-of-living increases authorized by section 8146a of the Act.

*Section 18*

The amendment made by this section provides \$200 for the administrative costs of termination of an employee's status with the Federal Government, and is payable in addition to the costs of funeral and burial expenses in section 8134 of the Act.

*Section 19*

The amendment made by this section permits the Secretary to discharge compensation liability by a lump sum payment if the monthly

payment to the beneficiary is less than \$50. (The current minimum monthly payment permitting this discharge is \$5.)

*Section 20*

The amendment made by this section provides for the computation of lump-sum payments based on the most current actuarial tables. It removes the required use of the American Experience Table of Mortality last published in 1868.

*Section 21*

This section amends section 8146(a) and (b) of the Act by removing the two-month waiting period currently required following a 3% rise in the price index for three consecutive months over the price index for the latest base month. The amendment to subsection (b) would facilitate the fixing of adjusted compensation to the nearest dollar for disability payments as is now provided for death payments.

*Section 22*

The amendment made by this section would assure injured employees who are able to return to work at some later date that during their period of disability, they will incur no loss of benefits that they would have received were they not injured. In addition, this amendment provides an absolute right to an employee who is injured and who recovers within one year from the date compensation begins to return to his old job or an equivalent position. For those employees whose disability extends beyond one year, the employing agency or department is to give priority in employment to the injured worker upon recovery.

*Section 23*

This section makes a technical amendment updating the "Table of Contents" to reflect the addition of Section 8151, "CIVIL SERVICE RETENTION RIGHTS."

*Section 24*

Certain groups were excluded from the cost-of-living increases provided for by the 1966 amendments to the Federal Employees Compensation Act. The amendment made by this section would accord these increases to all groups except military reservists or their survivors who will probably receive greater benefits from the Veterans Administration.

*Section 25*

The amendment made by this section would include the United States Postal Service among those organizations which are required to pay an additional amount into the Employees' Compensation Fund for administration.

*Section 26*

This section makes a technical amendment to section 8147(a) of the Act changing the reference to the Bureau of the Budget to the Office of Management and Budget.

*Section 27*

This section directs the Secretary of Labor to conduct a study concerning programs administered under the Act, including research,

evaluation, and an examination of the need for increases in allowances for services of attendants, and to report thereon to the Congress no later than twelve months after enactment of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman) :

TITLE 5, UNITED STATES CODE

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Subpart G—Insurance and Annuities

CHAPTER 81—COMPENSATION FOR WORK INJURIES

SUBCHAPTER I—GENERALLY

Sec.

- 8101. Definitions.
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- 8130. Assignment of claim.
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- 8138. Minimum limit modification of noncitizens and aliens.
- 8139. Employees of the District of Columbia.
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- 8142. Peace Corps volunteers.
- 8143. Jobs Corps enrollees; volunteers in service to America.
- 8143a. Members of the National Teacher Corps.
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- 8145. Administration.
- 8146. Administration for the Canal Zone and The Alaska Railroad.
- 8146a. Cost-of-living adjustment of compensation.
- 8147. Employees' Compensation Fund.
- 8148. [Repealed.]
- 8149. Regulations.
- 8150. Effect on other statutes.
- 8151. *Civil service retention rights.*

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## SUBCHAPTER I—GENERALLY

### § 8101. Definitions

For the purpose of this subchapter—

(1) "employee" means—

(A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(C) an individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(D) an individual employed by the government of the District of Columbia; and

(E) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

but does not include—

(i) a commissioned officer of the Regular Corps of the Public Health Service;

(ii) a commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(iii) a commissioned officer of the Environmental Science Services Administration; or

(iv) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521-535 of title 4, District of Columbia Code;

(2) "physician" includes surgeons, *podiatrists*, and osteopathic practitioners within the scope of their practice as defined by State law;

(3) "medical, surgical, and hospital services and supplies" includes services and supplies by *podiatrists*, osteopathic practitioners and hospitals within the scope of their practice as defined by State law;

(4) "monthly pay" means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of this title with respect to any period;

(5) "injury" includes, in addition to injury by accident, a disease proximately caused by the employment;

(6) "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion;

(7) "parent" includes stepparents and parents by adoption;

(8) "brother" and "sister" mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters;

(9) "child" means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children;

(10) "grandchild" means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support;

(11) "widower" means one who, because of physical or mental disability, was wholly dependent for support on the employee at the time of her death; (11) "*widower*" means the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause or because of her desertion;

(12) "compensation" includes the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death;

(13) "war-risk hazard" means a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring in the country in which an individual to whom this subchapter applies is serving; from—

(A) the discharge of a missile, including liquids and gas, or the use of a weapon, explosive, or other noxious thing by a hostile force or individual or in combating an attack or an imagined attack by a hostile force or individual;

(B) action of a hostile force or individual, including rebellion or insurrection against the United States or any of its allies;

(C) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or individual;

(D) the collision of vessels on convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(E) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities;

(14) "hostile force or individual" means a nation, a subject of a foreign nation, or an individual serving a foreign nation--

(A) engaged in a war against the United States or any of its allies;

(B) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(C) engaged in a war or armed conflict between military forces of any origin in a country in which an individual to whom this subchapter applies is serving;

(15) "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(16) "war activities" include activities directly relating to military operations;

(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is--

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

(18) "price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(19) "base month" means the month of July 1966 and each later month which is used as a basis for calculating an increase under section 8146a of this title.

(20) "organ means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back.

(21) "United States medical officers and hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Veterans' Administration, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor.

\* \* \* \* \*

#### § 8103. Medical services and initial medical and other benefits

(a) The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished—

(1) whether or not disability has arisen;

(2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the Government; and

(3) by or on the order of United States medical officers and hospitals, or, [when this is not practicable] at the employee's option, by or on [the] order of [private] physicians and hospitals designated or approved by the Secretary.

The employee may [be furnished transportation and may be paid all expenses incident to the securing of these services, appliances, and supplies which the Secretary considers necessary and reasonable.] initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

\* \* \* \* \*

#### § 8104. Vocational rehabilitation

(a) The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Secretary, insofar as practicable, shall use the services or facilities of State agencies and corresponding agencies which

cooperate with the Secretary of Health, Education, and Welfare in carrying out the purposes of chapter 4 of title 29, except to the extent that the Secretary of Labor provides for furnishing these services under section 8103 of this title. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund. However, in reimbursing a State or corresponding agency under an arrangement pursuant to this section the cost to the agency reimbursable in full under section 32(b)(1) of title 29 is excluded.

(b) *Notwithstanding section 8106, individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation at the rate provided in sections 8105 and 8110 of this title, less the amount of any earnings received from remunerative employment, other than employment undertaken pursuant to such rehabilitation.*

\* \* \* \* \*

#### § 8107. Compensation schedule

(a) If there is permanent disability involving the *loss, or loss of use of* use, of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of 66 $\frac{2}{3}$  percent of his monthly pay. The basic compensation is—

(1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;

(2) payable regardless of whether the disability also involves another impairment of the body; and

(3) in addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by—

(1) section 8105 of this title if the disability is total; or

(2) section 8106 of this title if the disability is partial.

(c) The compensation schedule is as follows:

(1) Arm lost, 312 weeks' compensation.

(2) Leg lost, 288 weeks' compensation.

(3) Hand lost, 244 weeks' compensation.

(4) Foot lost, 205 weeks' compensation.

(5) Eye lost, 160 weeks' compensation.

(6) Thumb lost, 75 weeks' compensation.

(7) First finger lost, 46 weeks' compensation.

(8) Great toe lost, 38 weeks' compensation.

(9) Second finger lost, 30 weeks' compensation.

(10) Third finger lost, 25 weeks' compensation.

(11) Toe other than great toe lost, 16 weeks' compensation.

(12) Fourth finger lost, 15 weeks' compensation.

(13) Loss of hearing—

(A) complete loss of hearing of one ear, 52 weeks' compensation; or

(B) complete loss of hearing of both ears, 200 weeks' compensation.



(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.

(15) Compensation for loss of more than one phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half of the compensation for loss of the entire digit.

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively.

(17) Compensation for loss of use of two or more digits or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby.

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member.

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.

(20) In case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively. However, when the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears.

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500 shall be awarded in addition to any other compensation payable under this schedule.

(22) *For permanent loss or loss of use of any important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks' compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.*

\* \* \* \* \*

#### **§ 8110. Augmented compensation for dependents**

(a) For the purpose of this section, "dependent" means—

(1) a wife, if—

(A) she is a member of the same household as the employee;

(B) she is receiving regular contributions from the employee for her support; or

(C) the employee has been ordered by a court to contribute to her support;

[(2) a husband, if wholly dependent on the employee for support because of his own physical or mental disability;]

- (2) *a husband, if—*
  - (A) *he is a member of the same household as the employee;*
  - (B) *he is receiving regular contributions from the employee for his support; or*
  - (C) *the employee has been ordered by a court to contribute to his support;*
- (3) *an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is—*
  - (A) *under 18 years of age; or*
  - (B) *over 18 years of age and incapable of self-support because of physical or mental disability; and*
- (4) *a parent, while wholly dependent on and supported by the employee.*

Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries.

\* \* \* \* \*

**§ 8111. Additional compensation for services of attendants or vocational rehabilitation**

(a) The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than **[\$300]** \$500 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance.

(b) The Secretary may pay an individual undergoing vocational rehabilitation under section 8104 of this title additional compensation necessary for his maintenance, but not to exceed **[\$100]** \$200 a month.

\* \* \* \* \*

**§ 8113. Increase or decrease of basic compensation**

(a) If an individual—

- (1) was a minor or employed in a learner's capacity at the time of injury; and
- (2) was not physically or mentally handicapped before the injury;

the Secretary of Labor, on review under section 8128 of this title after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) The Secretary, on review under section 8128 of this title after a disabled employee becomes 70 years of age and his wage-earning capacity would probably have decreased because of old age aside from and independently of the effects of the injury, may recompute prospectively the monetary compensation payable for disability on the

basis of an assumed monthly pay corresponding to the probable decreased wage-earning capacity.]

[(c)](b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.

\* \* \* \* \*

**§ 8116. Limitations on right to receive compensation**

(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States, except—

- (1) in return for service actually performed; [and]
- (2) pension for service in the Army, Navy, or Air Force[.];
- (3) *other benefits administered by the Veterans' Administration unless such benefits are payable for the same injury or the same death; and*
- (4) *retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with section 5532 (b) of title 5, United States Code.*

However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

\* \* \* \* \*

**§ 8117. Time of accrual of right**

An employee is not entitled to compensation for the first 3 days of temporary disability, except—

- (1) when the disability exceeds [21] 14 days;
- (2) when the disability is followed by permanent disability; or
- (3) as provided by sections 8103 and 8104 of this title.

**[§ 8118. Election to use annual or sick leave**

An employee may use annual or sick leave to his credit at the time disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title do not begin to run, until the use of the annual or sick leave ends.]

**§ 8118. Continuation of pay; election to use annual or sick leave**

(a) *The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E)), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a*

*form approved by the Secretary of Labor within the time specified in section 8122 (a) (2) of this title.*

*(b) Continuation of pay under this subchapter shall be furnished—*

*(1) without a break in time unless controverted under regulations of the Secretary;*

*(2) for a period not to exceed 45 days; and*

*(3) under accounting procedures and such other regulations as the Secretary may require.*

*(c) An employee may use annual or sick leave to his credit at the time the disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title do not being to run, until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends.*

**§ 8119. Notice of injury; failure to give**

**[(a)** An employee injured in the performance of his duty, or someone on his behalf, shall give notice thereof. The notice shall—

**[(1)** be given within 48 hours after the injury;

**[(2)** be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;

**[(3)** be in writing;

**[(4)** state the name and address of the employee;

**[(5)** state the year, month, day, and hour when and the particular locality where the injury occurred;

**[(6)** state the cause and nature of the injury; and

**[(7)** be signed by and contain the address of the individual giving the notice.

**[(b)** Compensation may be allowed only if the notice is given within 48 hours after the injury or if the immediate superior of the employee has actual knowledge of the injury. However, the Secretary of Labor may allow compensation if—

**[(1)** the notice is filed within 1 year after the injury and reasonable cause for the delay is shown; or

**[(2)** the requirement for 48 hours' notice is waived under section 8122 of this title.]

**§ 8119. Notice of injury or death**

*An employee injured in the performance of his duty, or someone on his behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in section 3133 of this title, or someone on his behalf. A notice of injury or death shall—*

*(a) be given within 30 days after the injury or death;*

*(b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;*

*(c) be in writing;*

*(d) state the name and address of the employee;*

*(e) state the year, month, day, and hour when and the particular locality where the injury or death occurred;*

(f) *state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause; and*  
(g) *be signed by and contain the address of the individual giving the notice.*

\* \* \* \* \*

#### § 8121. Claim

Compensation under this subchapter may be allowed only if an individual or someone on his behalf makes claim therefor. The claim shall—

(1) be made in writing within the time specified by section 8122 of this title;

(2) be delivered to the office of the Secretary of Labor or to an individual whom the Secretary may designate by regulation, or deposited in the mail properly stamped and addressed to the Secretary or his designee;

(3) be on a form [furnished] approved by the Secretary;

(4) contain all information required by the Secretary;

(5) be sworn to by the individual entitled to compensation or someone on his behalf; and

(6) except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

The Secretary may waive paragraphs (3)–(6) of this section for reasonable cause shown.

#### § 8122. Time for making claim

[(a) An original claim for compensation—

[(1) for death shall be made within 1 year after the death; and

[(2) for disability shall be made within 60 days after the injury.

However, the Secretary of Labor may allow an original claim for disability to be made within 1 year after the injury for reasonable cause shown.]

(a) *An original claim for compensation for disability or death must be filed within 3 years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if claim is not filed within that time unless—*

(1) *the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or*

(2) *written notice of injury or death as specified in section 8119 of this title was given within 30 days.*

(b) In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

[(c) The Secretary may waive compliance with the requirements of this subchapter for giving notice of injury and for filing claim for compensation for disability or death if—

[(1) a claim is filed within 5 years after the injury or death; and

[(2) the Secretary finds—

[(A) that the failure to comply was due to circumstances beyond the control of the individual claiming benefits; or

[(B) that the individual claiming benefits has shown sufficient cause or reason in explanation of, and material prejudice to the interest of the United States has not resulted from, the failure.]

*(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.*

(d) The time limitations in subsections [(a)–(c)] (a) and (b) of this section do not—

(1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or

(2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative[.]; or

*(3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.*

\* \* \* \* \*

#### § 8132. Adjustment after recovery from a third person

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as a result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury. *No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.* The amount refunded to the United States shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States for the same injury. However, the beneficiary is entitled to retain, *as a minimum*, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted[, plus]; *and in addition to this minimum and at the time of distribution*, an amount equivalent to a reasonable attorney's fee proportionate to the refund to the United States.

**§ 8133. Compensation in case of death**

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the widow or widower, if there is no child, ~~[45]~~ 50 percent.

(2) To the widow or widower, if there is a child, ~~[40]~~ 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.

(3) To the children, if there is no widow or widower, ~~[35]~~ 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

(4) To the parents, if there is no widow, widower, or child, as follows—

(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) 20 percent to each if both were wholly dependent; or

(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent~~[.]~~ as follows—

(A) 20 percent if one was wholly dependent on the employee at the time of death;

(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or

(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, *or* child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until—

(1) a widow *or* widower dies or remarries *before reaching age 60*;

~~[(2) a widower dies or remarries or becomes capable of self-support;]~~

~~[(3)]~~ (2) a child, a brother, a sister, or a grandchild ~~[dies or marries]~~ *dies, marries*, or becomes 18 years of age, or if over

age 18 and incapable of self-support becomes capable of self-support; or

[(4)] (3) a parent or grandparent dies [or marries] *marries*, or ceases to be dependent.

Notwithstanding paragraph [(3)] (2) of this subsection, compensation payable to or for a child, a brother or sister, or [a] grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. *A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.*

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed—

(1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146a of this title; or

(2) 75 percent of the monthly pay of the maximum rate of basic pay for GS-15.

(f) *Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of section 8101 (1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States.*

\* \* \* \* \*

#### § 8135. Lump-sum payment

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if—

(1) the monthly payment to the beneficiary is less than [ \$5 ] \$50 a month;

(2) the beneficiary is or is about to become a nonresident of the United States; or

(3) the Secretary of Labor determines that it is for the best interest of the beneficiary.

The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the [American Experience Table of Mor-



talities] *most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time*, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage *before reaching age 60*, a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the remarriage.

\* \* \* \* \*

**§ 8143. Job Corps enrollees; volunteers in service to America**

(a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection—

(1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS-2;

(2) section 8113(a) [ , (b) ] of this title applies to an enrollee; and

(3) "performance of duty" does not include an act of an enrollee while absent from his assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from the post of duty) authorized by or under the direction and supervision of the Job Corps.

\* \* \* \* \*

**§ 8146a. Cost-of-living adjustment of compensation**

(a) Each month the Secretary of Labor shall determine the percent change in the price index. Effective the first day of the [third] month which begins after the price index change equals a rise of at least 3 percent for 3 consecutive months over the price index for the latest base month, compensation payable on account of disability or death which occurred more than 1 year before that first day shall be increased by the percent rise in the price index (calculated on the highest level of the price index during the 3 consecutive months) adjusted to the nearest one-tenth of 1 percent.

(b) The [monthly compensation] *regular periodic compensation payments* after adjustment under this section shall be fixed at the nearest dollar. However, the [monthly] *regular periodic compensation* after adjustment shall reflect an increase of at least \$1.

(c) *This section shall be applicable to persons excluded by section 15 of the Federal Employees' Compensation Act Amendments of 1966 (P.L. 89-488) under the following statutes: Act of Feb. 15, 1934 (48 Stat. 351); Act of June 26, 1936 (49 Stat. 2035); Act of April 8, 1935 (49 Stat. 115); Act of July 25, 1942 (56 Stat. 710); P.L. 84-955 (Aug. 3, 1956); P.L. 77-784 (Dec. 2, 1942); P.L. 84-879 (Aug. 1, 1956); P.L. 80-896 (July 3, 1948); Act of September 8, 1959 (73 Stat. 469). Benefit payments to these persons shall initially be increased by*

*the total percentage of the increases in the price index from the base month of July, 1966, to the next most recent base month following the effective date of this subsection.*

**§ 8147. Employees' Compensation Fund**

(a) There is in the Treasury of the United States the Employees' Compensation Fund which consists of sums that Congress, from time to time, may appropriate for or transfer to it, and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. The Secretary of Labor shall submit annually to the [Bureau of the Budget] *Office of Management and Budget* estimates of appropriations necessary for the maintenance of the Fund. For the purpose of this subsection, "administrative expenses" does not include expenses for legal services performed by or for the Secretary under sections 8131 and 8132 of this title.

(b) Before August 15 of each year, the Secretary shall furnish to each agency and instrumentality of the United States having an employee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof a statement showing the total cost of benefits and other payments made from the Employees' Compensation Fund during the preceding fiscal year on account of the injury or death of employees or individuals under the jurisdiction of the agency or instrumentality. Each agency and instrumentality shall include in its annual budget estimates for the next fiscal year a request for an appropriation in an amount equal to the costs. Sums appropriated pursuant to the request shall be deposited in the Treasury to the credit of the Fund within 30 days after they are available. An agency or instrumentality not dependent on an annual appropriation shall make the deposit required by this subsection from funds under its control. If an agency or instrumentality (or part or function thereof) is transferred to another agency or instrumentality, the cost of compensation benefits and other expenses paid from the Fund on account of the injury or death of employees of the transferred agency or instrumentality (or part or function) shall be included in costs of the receiving agency or instrumentality.

(c) In addition to the contributions for the maintenance of the Employees' Compensation Fund required by this section, *the United States Postal Service*, or a mixed ownership corporation as defined by section 856 of title 31, or any other corporation or agency or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to or as provided by sections 841-869 of title 31, shall pay an additional amount for its fair share of the cost of administration of this subchapter as determined by the Secretary. With respect to these corporations, agencies, and instrumentalities, the charges billed by the Secretary under this section shall include

an additional amount for these costs, which shall be paid into the Treasury as miscellaneous receipts from the sources authorized and in the manner otherwise provided by this section.

\* \* \* \* \*

**§ 8151. Civil service retention rights**

(a) *In the event the individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, annuity computation under the civil service retirement provisions, retention purposes, and other rights and benefits based upon length of service.*

(b) *Under regulations issued by the Civil Service Commission—*

(1) *the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and*

(2) *the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his former or equivalent position within such department or agency, or within any other department or agency.*

# DISSENTING VIEWS ON ILR. 13871

I must dissent from the report of this Committee, for I believe it has once again recommended the passage of a bill which is not in the best interest of the American people, the American taxpayers. Its costs, which are estimated by the Committee at 54 million dollars over the next five years, are but another blow to the producers and taxpayers of this country and an aid to the tax consumers, those on the government payroll.

In an article in the April 27, 1974 edition of Business Week, the following passage appeared:

## DISABILITY EPIDEMIC

Another outsized cost borne by the federal system lies in the unusually large number of employees retired "on disability." Only 16.5% of those receiving Social Security payments were retired on disability, which is regarded as a reasonable measure of experience elsewhere in our society (although many industrial companies claim that 10% or less retire for this reason). But 28% of the Civil Service annuitants retire on disability.

Thus, early retirement for disability is 70% greater in Civil Service than for the whole economy and well over double the average reported by many companies. This is a hugely expensive aberration in the federal system.

Obviously, there are advantages to early "disability" retirement. The most important is a tax advantage: The first \$5,200 of such income is tax-free. The facts suggest that the government may be a bit relaxed in deciding just what "disability" really means.

Pensions are but one of the fringe benefits of the federal civil servant that top those offered employees by private industry. For example, a recent study by the BLS compared certain federal and industry benefit costs as a percent of payroll as follows:

| [In percent]                          |         |          |
|---------------------------------------|---------|----------|
|                                       | Federal | Industry |
| Vacations.....                        | 8.1     | 5.3      |
| Holidays.....                         | 2.9     | 3.2      |
| Personal leave.....                   | .6      | .3       |
| Sick leave.....                       | 3.3     | 1.1      |
| Health, life, accident insurance..... | 1.8     | 4.4      |
| Total.....                            | 16.7    | 14.3     |

This survey indicates that federal employees enjoy 50% more paid time off than their counterparts in industry. Only legal holidays fall below the industry average. However, the civil servant does have less insurance protection, unless he provides it himself.

I think it would be revealing to have a top-flight actuarial group determine what the government's fringe benefits—especially pensions—would cost when based on the same assumptions they use for such representative large companies as Du Pont, General Electric, AT&T, Exxon, and General Motors. My own estimate is that the real costs of federal benefits that must ultimately be paid by the taxpayers are substantially above industry outlays.

This is the situation in regard to federal employee fringe benefits today, yet this bill would, among other things, extend the time for filing for disability compensation from one to three years, and would grant Federal employees who recover from disabling injuries within one year a guaranteed right to return to their former jobs or jobs of equal rank and pay. It would also allow disabled Federal employees to request that their time on the disability rolls be credited as active service time for civil service retirement benefits; it would permit continuation of maximum benefits to those workers who recover sufficiently to enter an approved program of vocational rehabilitation.

This massive increase in the fringe benefits for federal employees, including participants in the Job Corps program, the Civilian Conservation Corps, the Federal Public Works Administration, the Works Projects Administration and other New Deal agencies, is, in the absence of a sound actuarial examination of the compensation already paid to government employees, ill-considered.

It is also inflationary. A business that increased fringe benefits for its employees when the business was running in the red, is not a business I would care to invest in. Governments, like businesses, are also subject to losses of confidence, and when a loss of confidence in a government occurs, the consequences are much graver than when a business enterprise loses the trust of its creditors.

In the past six years the interest on our national debt has more than doubled, up from 14 billion to an amazing 29 billions. During that same brief period, our national debt has skyrocketed from 370 billions to 508 billions. To increase spending further at this time, without a companion measure to provide the necessary funds is the height of irresponsibility.

One body of this Congress recently had the good sense to forestall a rise in pay for Members of Congress; I hope that this House will have the good sense to pay government employees benefits this government can afford.

EARL F. LANDGREBE.

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